IN THE

Supreme Court of the United States

October Term, 1943

No. 559

HANS PETE MORTENSEN and LORRAINE MORTENSEN,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH DISTRICT.

REPLY BRIEF OF PETITIONERS

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Law Briefs—OMAHA LINO-SLUG CO.—418 So. 15th St.

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

On pages 10 and 11 of its brief the United States urges that the transportation in the instant case was such as is denounced by Section 1 of the Mann Act (18 U. S. C. A. 397) and discusses the cases bearing upon the question presented by petitioners.

On November 4th, 1943, the Circuit Court of Appeals for the Eighth Circuit decided the case of *Ellis vs. United*

States, which case appears in the Federal Reporter advance sheets of January 3, 1944 (138 Fed. (2d), p. 612), and same deals with the very question under discussion in the instant case and in principle that decision is in conflict with the decision in the instant case.

The first paragraph of the syllabus is as follows:

"Under statute forbidding transportation in interstate commerce of girl for immoral purposes, the gist of the offense is not ultimate immoral design but act of knowingly transporting or causing or aiding or assisting in transportation in interstate commerce of girl for such immoral design.—18 U. S. C. A. 398."

The second paragraph of the syllabus is as follows:

"Conduct of defendant, charged with having transported in interstate commerce girl for immoral purposes and with having conspired to commit such offense, is beyond Federal punishment, in absence of essential factor of interstate transportation in furtherance of immoral purposes.—Cr. Code 37, 18 U. S. C. A. 88; 18 U. S. C. A. 398."

In the opinion, at pages 613 and 614, it is stated:

"The question primarily before us in each appeal is whether there was sufficient competent evidence before the trial court to sustain a verdict of guilty (a) upon one or more of the first twenty-five counts, the sentences thereunder having been prescribed for concurrent service; and (b) upon the twenty-sixth count. This question involves certain issues touching the reception of testimony, and especially an examination of the evidence, which must be made with full understanding that the gist of the offense defined by 18 U. S. C. A. 398 is not the ultimate immoral design charged against the defendant, which, in its conception and achievement, is actually his major trans-

gression, but rather the narrow act of the knowing transportation or causing, or aiding or assisting in the transportation in interstate commerce of any woman or girl with such immoral design. Hoke v. United States, 227 U. S. 308, 320, 33 S. Ct. 281, 57 L. Ed. 523, 23 L. R. A., N. S., 906, Ann. Cas. 1913E, 905; Athanasaw v. United States, 227 U. S. 326, 332, 33 S. Ct. 285, 57 L. Ed. 528, Ann. Cas. 1913E, 911; Wilson v. United States, 232 U. S. 563, 571, 34 S. Ct. 347, 58 L. Ed. 728; Roark v. United States, 8 Cir., 17 F. 2d 570, 573; Drossos v. United States, 8 Cir., 16 F. 2d 833, 834; Tedesco v. United States, 9 Cir., 118 F. 2d 737, 741. So however immoral may be a defendant's conduct, it is beyond federal punishment in the absence of the essential factor of interstate transportation in furtherance of such conduct."

Respectfully submitted,

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